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UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.290
9 May 1997

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE 290th MEETING

Held at the Palais des Nations, Geneva
on Friday, 2 May 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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GE.97-16410 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second period report of Paraguay (continued) (CAT/C/29/Add.1; HRI/CORE/1/Add.24)

1. At the invitation of the Chairman, Mr. Giménez Cabral, Mrs. Casati and Mrs. Alcaraz Cañiza (Paraguay) took places at the Committee table.

2. Mr. GIMENEZ CABRAL (Paraguay) said that the new draft Penal Code was currently before the Chamber of Deputies. He had obtained firm assurances that it would be adopted by 15 May 1997.

3. With regard to the inclusion in Paraguayan legislation of a definition of torture based on that contained in the Convention, the draft Penal Code did not normally define offences, but specified the penalties to be imposed. However, the following motives for an act of torture were stated and constituted a type of definition: the use of physical or mental violence against a prisoner or detainee to obtain a confession or evidence or for purposes of intimidation, mortification or humiliation.

4. Articles 590 and 615 of the Code of Criminal Procedure dealt with extradition, which was based on treaties, the written customary law in force in the country requesting extradition or the principle of reciprocity.

5. Legal cooperation was based on reciprocity. When a request was made by a foreign court to a Paraguayan court, the sole requirement was that the relevant records should be clearly identifiable in the "Archivo del Terror" documentation centre.

6. With regard to the rights of suspects, questioning by the police normally took place in the presence of a legal counsel who informed arrested persons of their constitutional rights. Suspects were not forced to give evidence against their will. Statements obtained from suspects during the investigation were considered valid only if they had been made before the competent judge. All complaints of physical and psychological ill-treatment by officials that reached the higher police authorities, the Office of the Attorney-General or the Commission on Human Rights and Indigenous Affairs were investigated.

7. There was no evidence that doctors had participated directly in acts of torture under the previous regime. In most cases, their role had consisted in issuing death certificates that concealed the true cause of death. He had no information about doctors involved in the treatment and rehabilitation of victims of torture in public sector institutions and there was no re-education programme for doctors, as no allegations of torture had been made against a member of the medical profession.

8. Persons of either sex who were under 22 years of age and had completed secondary education were admitted to police academies. They were allowed home

only on weekends and qualified as police officers after three years of study. In addition to a wide range of general subjects, the curriculum covered such disciplines as psychology, medicine, ethics and constitutional, commercial, criminal and other branches of law. In the area of law enforcement, emphasis was placed, inter alia, on the control of drug trafficking and money laundering, the handling of weapons and police psychology. Many young police officers attended courses abroad, particularly in Germany, the United States and the United Kingdom. Young people under the age of 20 were admitted to junior schools for subordinate officers on completing basic education. Both categories of establishment provided instruction in basic human rights principles, the proper conduct of a police officer in the light of those principles and international human rights treaties.

9. The Human Rights Protection Office within the Legal Department of the Ministry of the Interior had much the same duties as the corresponding body in the Ministry of Justice and Labour. In practice, however, its activities were confined to the handling of complaints of human rights violations by police officers. It was headed by a former member of Parliament who was currently serving as Director of Tacumbú prison.

10. The bill referred to in paragraph 59 of the report (CAT/C/29/Add.1) had become Act No. 838, which provided for the compensation of the victims of human rights violations under the dictatorship. The provision for compensation for unlawful detention for a continuous period of over three months had been deleted. The period referred to in the Act was "over one year".

11. Under the Constitution and the Code of Criminal Procedure, an arrested person must be brought before a judge within 24 hours and nobody could be held incommunicado save by order of the competent judge. The maximum period of such detention was three days with the possibility of extension for a further three days where substantiated grounds existed. The defence counsel was not affected by such rulings.

12. Military service was compulsory for males who had reached 17 years of age. It had become a tradition, especially in rural areas, for 14 or 15-year-old boys to sign up for military service and it was not always possible to monitor the age of conscripts. Moreover, medical examinations were not always effective in weeding out the physically unfit and young people had been known to die of heart failure during military exercises. There were isolated cases of ill-treatment of conscripts and the culprits were subject to prosecution by the military courts.

13. According to a report he had obtained from the National Police Headquarters, over 100 police officers had been accused of ill-treating individuals in their charge under the previous regime. To date, about 40 had been dismissed as a result of legal proceedings. He had recently spoken to three prison officers accused of ill-treatment of prisoners. Two had left the service voluntarily and the third had been dismissed. His case was currently before the ordinary courts.

14. Complaints of police ill-treatment could be filed with the Office of the Attorney-General, the Parliamentary Commission on Human Rights, the Bicameral Commission of Investigation, the Human Rights Protection Office of the Ministry of the Interior or the national police authorities themselves.

15. The Prisons Act prohibited the detention of accused and convicted persons in the same location.

16. Although peasants suffered from economic injustice and the unequal distribution of wealth, they were not evicted from their lands, but were removed by court order from private property on which they had been squatting. They were frequently responsible for the deforestation of woodland property or used the land to cultivate narcotics.

17. The guarantees provided by the Constitution included unconstitutionality, which was proclaimed by the Supreme Court, three different types of habeas corpus (preventive, reparative and general) (HRI/CORE/1/Add.24, para. 146) habeas data concerning the right of access to police and other records and the right of amparo (protection).

18. With regard to the rank of treaties, he drew attention to paragraphs 162 and 163 of document HRI/CORE/1/Add.24.

19. There had been no state of emergency since the advent of democracy. The conditions governing states of emergency were set forth in paragraphs 13 to 23 of document CAT/C/29/Add.1.

20. Members of the Supreme Court were appointed from a list of three candidates submitted to the Senate by the Judicature Council. There were nine members altogether. The Judicature Council proposed to the Supreme Court the names of candidates for offices in the lower courts.

21. With regard to irremovability, judges were initially appointed for a five-year term of office. If they remained in office for a further two terms, they acquired security of tenure until the age of 75.

22. The constitutional division of the Supreme Court was responsible for examining and ruling on the constitutionality of laws and regulations and for deciding whether to declare final or interlocutory judgements invalid on grounds of unconstitutionality. The constitutional division could be invoked directly; it was also possible for other courts to refer matters to its jurisdiction.

23. Conscientious objector status on religious grounds was authorized by the Constitution. Conscientious objectors were not physically ill-treated, but they were called effeminate and psychologically ill-treated.

24. The delegation of Paraguay withdrew.

The meeting was suspended at 3.50 p.m. and resumed at 4.20 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

25. Mr. BRUNI (Secretary of the Committee) read out the list of country rapporteurs and alternate rapporteurs for the reports submitted by States parties to the Convention for consideration at the Committee's nineteenth session in November 1997. The country rapporteurs and alternates were, respectively, Mr. González Poblete and Mr. Zupancic (Argentina), Mr. Pikis and Mr. Zupancic (Cuba), Mr. Burns and Mr. Sorensen (Cyprus), Mr. Camara and Mrs. Iliopoulos-Strangas (Portugal), Mr. González Poblete and Mr. Dipanda Mouelle (Spain) and Mr. Dipanda Mouelle and Mrs. Iliopoulos-Strangas (Switzerland). The consideration of the report of Guatemala had also been rescheduled for the November meeting. No country or alternate rapporteurs had been chosen for France, Germany, Guatemala, New Zealand, Norway or Peru.

26. Mrs. ILIOPOULOS-STRANGAS asked whether it was not premature to choose the rapporteurs for reports scheduled for consideration at the May 1998 session of the Committee.

27. Mr. ZUPANCIC said that, if any members of the Committee were up for re-election prior to the May 1998 session, it might be equally premature to take a decision in November 1997.

28. Mr. SORENSEN said that, since the elections would not take place until after the November session, the Committee might as well take a decision on the matter immediately, at least in the case of Guatemala.

29. Mrs. ILIOPOULOS-STRANGAS said that other, more urgent country reports might be submitted in the interim and that members of the Committee might wish to change their assignments.

30. Mr. CAMARA said that the Committee already knew which of its members had mandates extending into 1998. Personally, he preferred to know which reports he was responsible for as far in advance as possible.

31. Mr. BURNS said that he was not allowed to serve as rapporteur for New Zealand, but volunteered to do so for the reports of Germany and Norway.

32. Mr. SORENSEN said that he volunteered to serve as rapporteur for the reports of Norway, Germany and Guatemala.

33. Mr. GONZÁLEZ POBLETE said that he was willing to work with Mr. Sorensen on the report of Guatemala. He was, however, already scheduled to introduce the reports of Argentina and Spain at the November session and hoped that he would not be required to introduce two country reports as closely together as he had done at the current session in the case of Mexico and Paraguay.

34. Mr. PIKIS said it was wrong for Committee members to allow its members to volunteer to serve as rapporteurs for country reports. The Committee's work should be distributed at random on a strictly equitable basis. He was unwilling either to volunteer or to agree to anyone else doing so.

35. Mr. CAMARA said that he agreed with Mr. Pikis. Random selection would avoid any suspicion of subjectivity and would ensure that all members of the Committee had equal workloads.

36. Mrs. ILIOPOULOS-STRANGAS said that she agreed with Mr. Camara and Mr. Pikis. It was also important to ensure that the same Committee member was not always assigned to the reports of a particular country. Since the Committee's documents were available in translation, there was no need to distribute country reports on the basis of language. To allow Committee members to volunteer to serve as country rapporteurs was not conducive to objectivity. In the past, members who had not volunteered had been forced to serve as rapporteurs for the reports that no one else had wanted.

37. The CHAIRMAN said that the Committee had always assigned country reports on a volunteer basis in order to facilitate the work of the rapporteurs. He asked whether the Committee had in fact been accused of a lack of objectivity.

38. Mr. ZUPANCIC said he thought that the Committee should follow its past practice. Mr. González Poblete's introductions of country reports had provided an excellent example of the fact that country rapporteurs needed familiarity with the legal system of the country in question in order to read between the lines of reports.

39. Mr. YAKOVLEV said that the members of the Committee were experts who were supposedly equal with regard to the law, the Convention and States parties. It was also important for the Committee's workload to be equitably distributed. It was desirable, but not essential, to take account of individual members' areas of linguistic and legal expertise. He suggested that, after consultation with the secretariat, the Chairman should nominate country and alternate rapporteurs and submit the nominations to the Committee for its approval.

40. Mr. GONZÁLEZ POBLETE said that he had no intention of taking on all the reports for Spanish-speaking countries, but could agree to work primarily on Spanish-language reports. The annexes to reports, such as legislative texts, and the reports of smaller non-governmental organizations were, moreover, not necessarily submitted in one of the Committee's working languages - and yet those documents were often very useful. According to the Committee's rules of procedure, such organizations were not allowed to address the Committee, but they might some day be, as was the case in the Committee on Economic, Social and Cultural Rights.

41. Mr. PIKIS said that the Committee was composed of 10 experts who had been appointed precisely because of their expertise; there was one Convention to apply and all experts were equal. A system should be devised that would maximize the Committee's contribution and enable it to work as collectively as possible. He proposed a rotation system, which would be objective and consistent. Proceeding through the list of Committee members, A and B lists would be established for country rapporteurs and alternates, and, after every five countries considered, the list would be exhausted. If the "A" person was unable to serve, he or she would be replaced by the "B" name on the list and then take the next case slated for that person. He did not agree with Mr. Yakovlev about leaving the decision up to the Chairman.

42. Mr. CAMARA said that attention must be paid to the universal character of the Committee. Linguistic, cultural or regional criteria could not be favoured, as the Convention was an international instrument that went beyond language and culture. For the sake of objectivity, it would be a good idea to have country rapporteurs deal with regions other than their own.

43. Mr. SORENSEN said he agreed that the Committee was universal in character and that its work should be distributed equally, but recalled that it was also trying to make the reporting system more effective. Although the four working languages were equal, it was a big advantage if at least one of the rapporteurs knew the original language of the report and if both the country rapporteur and the alternate spoke the same language. He therefore hesitated to adopt the sort of automatic rotation system proposed by Mr. Pikis.

44. Mr. GONZÁLEZ POBLETE said that any rigid procedure adopted by the Committee might be counter-productive. He trusted in the Chairman to take decisions with assistance from the secretariat. Any automatic system would provide for more equitable distribution, but some countries were more difficult in any case. Criteria were needed, but they should not be rigid.

45. Mr. BURNS said that a system where the Chairman distributed the case load would be the most effective. He would be pleased if the Chairman assigned countries on the basis of equity, but using criteria of effectiveness. Reports in Spanish tended to be more difficult, with certain political nuances that he in particular would have trouble dealing with.

46. Mr. REGMI said that he agreed with Mr. Burns.

47. The CHAIRMAN suggested that the Bureau could manage the distribution of countries according to the various criteria that had been proposed.

48. Mr. PIKIS said that an automatic system was simple and easy. As long as personal disqualification was still possible, such a system was the best solution for ensuring impartial justice and equity.

49. Mr. SORENSEN said that he agreed with the Chairman. In the appointment of rapporteurs, the workload on article 19 and on article 22 should be taken into account because, in many ways, the latter involved more work than the former.

50. Mr. CAMARA said that, since all members of the Committee seemed to agree on the criteria, the Chairman and the secretariat could do the assignments.

51. Mr. ZUPANCIC said that the Chairman should distribute both the reports and the communications, requesting advice from the Bureau, as in any case his decisions were open to debate by the Committee.

52. Mr. YAKOVLEV said he agreed that the Chairman's proposals were open to debate.

53. The CHAIRMAN suggested that he should distribute reports and communications. If he heard no objection, he would take it that the Committee wished to suspend its decision on 1998 country rapporteurs until its next session.

54. It was so decided

FUTURE MEETINGS ON THE COMMITTEE (agenda item 7) (continued)

55. Mr. ZUPANCIC read out the following draft letter from the Chairman to the Secretary-General conveying the Committee's request for an extra week of work:

> "Having in mind both the tragic importance of the Convention against Torture and the persistence of the abhorrent practice of torture, the Committee against Torture urges the Secretary-General to request the General Assembly to authorize six working days to enable the Committee to function effectively.
>
> In its regular annual report to the General Assembly (Official Records, Fiftieth Session, Supplement No. 44 (A/50/44, paras. 208 and 209), the Committee already explained the need for an additional regular session of one week's duration due to the great complexity of its work, the intensive pace of its operations resulting from the increase in the number of States parties to the Convention, the new cycle of periodic reports submitted by States parties, the increasing volume of information received under the inquiry procedure and the growing number of communications submitted under the individual communications procedure.
>
> The Committee hereby reiterates this urgent request to your Excellency in view of these same reasons and wishes to add the following: keeping in mind the unfortunate budgetary constraints at the United Nations, the Committee proposes the simple extension of its present sessions for an additional six working days. This would not result in any additional travel expenditures for the expert members of the Committee. These additional six working days would, however, permit the Committee to deal with the rising backlog of cases. It would also enable the Committee to deal with some more reports of States parties at each session and to devote more time and attention to individual communications.
>
> On this occasion, the Committee also reconfirms its deep conviction concerning the critical importance of its mission, as well as its empirically supported belief that the functioning of the Committee so far has already proved to be decisive in the radical reduction of the abhorrent practice of torture, as well as in the enhancement of other goals expressed and implied in the Convention against Torture. While we appreciate that only limited resources are available in the budget of the United Nations, we feel that the work of the experts on the Committee could and should be met with the minimal additional expenditure described above.

In anticipation of your support for the cause of combating torture in the world, we should like to express our ..., etc."

56. Mrs. ILIOPOULOS-STRANGAS said that the letter should refer to the fact that the Committee was a small one consisting of 10 members, whereas the other Committees had 18 members. It should also mention the fact that the situation had worsened since the Committee's last report to the General Assembly. Was it not the Committee's intention to request five, rather than six, additional working days?

57. Mr. ZUPANCIC said that the request should be for five days.

58. Mr. PIKIS said that the choice of the word "tragic" in the first paragraph was unfortunate; it should be deleted. He also had reservations about the penultimate paragraph, as he disagreed with the statement that the functioning of the Committee had been decisive in the reduction or enhancement of the practice of torture. The Committee's work was being used, but the Committee should not blow its own trumpet. It was not seeking extra work because of the persistence of torture, but because of the workload imposed by the Convention and because it was trying to avoid a backlog.

59. Mr. SORENSEN said that the Committee should provide details on the backlog of work and the number of communications and periodic reports it had to deal with in order to substantiate its request for longer sessions. It should also refer to General Assembly resolution 51/87 in connection with the need for human rights treaty bodies to be given sufficient resources to overcome existing difficulties with their effective functioning. The members of the Committee should urge the representatives of their countries to support the request when it was submitted to the General Assembly.

60. Mr. YAKOVLEV said that the words "new cycle" in the second paragraph should be replaced by the words "significant rise in the number" to emphasize the fact that the budget allocated to the Committee when it had been set up was no longer commensurate with the number of States parties to the Convention or the larger volume of communications. The Committee should consider whether it would be appropriate to provide figures on how much the extra working days would cost.

61. Mr. CAMARA said it should be emphasized that the length of the Committee's sessions had been determined at a time when the workload had been significantly lighter and that the volume of work had grown to such an extent that a failure to extend the Committee's sessions could seriously impede its work.

62. Mrs. ILIOPOULOS-STRANGAS said that the Committee should make it clear that the extra days would not place a great financial burden on the United Nations.

63. Mr. BRUNI (Secretary of the Committee) said that the request for extra working days would have to go through the relevant administrative channels that decided how the regular budget was allocated. The Committee should focus on making it clear that it no longer had enough time to deal with the volume of work.

64. Mr. ZUPANCIC suggested that the letter should be redrafted by the secretariat to include the comments made by the members of the Committee.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-FIRST SESSION (agenda item 8):

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

65. Mr. BRUNI (Secretary of the Committee), drawing attention to General Assembly resolutions 51/86 and 51/87 and Commission on Human Rights resolutions 1997/38 and 1997/105, said that operative paragraph 5 of resolution 51/87 referred to an analytical study that would compare the provisions of a number of human rights conventions and was designed to identify duplication of reporting required under the instruments. He also noted that the report of the independent expert on enhancing the long-term effectiveness of the United Nations human rights treaty system had been finalized.

66. Mr. SORENSEN said that, in the fourth preambular paragraph of resolution 51/86, the General Assembly had for the first time acknowledged the existence of rehabilitation centres for victims of torture. It was also commendable that operative paragraph 20 of the resolution stressed the need for training to be provided to armed forces, police personnel and health-care workers in matters relating to human rights and the prevention of torture. In view of operative paragraph 8, the Committee should consider inviting the Special Rapporteur on the question of torture to a forthcoming session.

67. Commission on Human Rights resolution 1997/38 contained several new points, particularly in operative paragraphs 7 and 11. The Committee should discuss how it would proceed in respect of the proposed United Nations international day in support of victims of torture and the total eradication of torture, as referred to in operative paragraph 17.

The meeting rose at 6 p.m.